

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

UNITED STATES OF AMERICA :
:
v. : FILE NO. 1:04-CR-93-02
:
SHANNON SMITH :
: _____

RULING ON SHANNON SMITH'S MOTION FOR NEW TRIAL
(Paper 181)

Pursuant to Fed. R. Crim. P. 33, "[u]pon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires." Granting a motion for a new trial is discretionary and only warranted when a defendant shows actual prejudice. See, e.g., United States v. Gaskin, 364 F.3d 438, 463 (2d Cir. 2004).

In this case, defendant Shannon Smith has moved for a new trial, alleging he suffered prejudice as a result of a mistrial granted his co-defendant after that co-defendant physically attacked his own lawyer. "As a general rule, a cautionary instruction advising the jury not to allow a disruptive co-defendant's behavior to impact the decision regarding other defendants affords sufficient protection against undue prejudice." United States v. Koskela, 86 F.3d 122, 125 (8th Cir. 1996).

Here, in addition to conducting a voir dire of the jury to ensure its members had retained their impartiality, the court gave a cautionary instruction informing the jury, inter alia, not

to allow the behavior of Mr. Smith's co-defendant to affect its decision on Smith's guilt or innocence. The jury is presumed to have followed this instruction; furthermore, the fact that the jury acquitted Mr. Smith of one count indicates the disruptive behavior of his co-defendant did not prejudice Smith.

The Motion for New Trial is DENIED.

SO ORDERED.

Dated at Brattleboro, Vermont, this 14th day of March, 2006.

/s/ J. Garvan Murtha

J. Garvan Murtha
United States District Judge